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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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KENNETH BOYKINS,

Petitioner,

-v-

SUPERINTENDENT AUBURN CORRECTIONAL  
FACILITY,

Respondent.

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**DECISION AND ORDER**  
12-CV-0548M



Petitioner, Kenneth Boykins, had filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging a conviction entered in New York State Supreme Court, County of Monroe, on September 17, 2007. (Docket No. 1, Petition.) Because petitioner did not state, as he was instructed to do in the Pro Se Section 2254 Petition Form, either what grounds (claims) he had raised in his application to the New York State Court of Appeals for a certificate granting leave to appeal (Petition, ¶ 11(d), nor the specific grounds he was raising in the petition (*id.*, ¶ 22), the Court directed petitioner to file an amended petition which stated what grounds he was raising in support of his petition. (Docket No. 8, Decision and Order.) Petitioner has filed an amended petition which raises the four grounds that had been raised on direct appeal and attaches a copy of his appellate counsel's brief to the Appellate Division, Fourth Department. (Docket No. 9.) Accordingly,

IT HEREBY IS ORDERED as follows:

1. Respondent shall file and serve an **answer** to the petition, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, no later than **ninety (90) days after entry of this Order**. Further, the answer shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If any such proceeding was conducted, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court the transcript of the proceeding, together with any record(s) of such proceeding, and such documents will be filed in the official record of this case.

Respondent also shall file and serve by the above date a **memorandum of law** addressing each of the issues raised in the petition and including citations of relevant supporting authority.

Within thirty (30) days of the date this order is served upon the custodian of the records, the Clerk of Court or any other official having custody of the records of the proceedings in Supreme Court at issue now before this Court shall submit such records to the respondent or respondent's duly authorized representative.

If petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court a copy of the briefs on appeal and the opinions of the appellate courts, if any, and such documents will be filed in the official record of this case.


If petitioner chooses to file a written response to the answer and memorandum of law, he should file the response within sixty (60) days of receipt of the answer.

Within thirty (30) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits which demonstrate that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

2. The Clerk of Court shall serve a copy of the petition, together with a copy of this order, electronically via a Notice of Electronic Filing to Alyson Gill <[Alyson.Gill@ag.ny.gov](mailto:Alyson.Gill@ag.ny.gov)> and [Arlene.Roces@ag.ny.gov](mailto:Arlene.Roces@ag.ny.gov) of the Office of the Attorney General, Federal Habeas Unit.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR RESPONDENT.**

IT IS SO ORDERED.

  
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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

Dated: June 25, 2014